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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,318	02/12/2004	Bruce Schofield	909426-US-NP	5590

34645 7590 08/04/2010  
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EXAMINER
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PATEL, CHIRAG R

ART UNIT	PAPER NUMBER
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2454

NOTIFICATION DATE	DELIVERY MODE
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08/04/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

john@gorecki.us  
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<b>Office Action Summary</b>	<b>Application No.</b> 10/777,318	<b>Applicant(s)</b> SCHOFIELD ET AL.	
	<b>Examiner</b> CHIRAG PATEL	<b>Art Unit</b> 2454	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 May 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 5-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 5-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

***Response to Arguments***

Applicant's arguments with respect to claims 1-2 and 5-13 have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 12-13 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

As per claim 12, the broadest reasonable interpretation of "computer readable medium" is directed to both transitory and non-statutory subject matter such as signals and carrier waves. Examiner suggest an amendment "non-transitory computer readable medium" This amendment would not be considered new matter.

See MPEP 2106, "See, *e.g.*, *In re Nuijten*, Docket no. 2006-1371 (Fed. Cir. Sept. 20, 2007)(slip. op. at 18)("A transitory, propagating signal like Nuijten's is not a 'process, machine, manufacture, or composition of matter.' . Thus, such a signal cannot be patentable subject matter.").

Claim 13 which depend from claim 12, also fail to add subject matter which meet a statutory category of invention (process, machine, manufacture, or composition of matter).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2 and 5-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rapaport et al. – hereinafter Rapaport (US 2006/0161457) in view of K. Moore, An Extensible Message Format for Delivery Status Notifications Request for Comments: 3464, Network Working Group, January 2003, pages 1-40.

As per claim 1, Rapaport discloses a method of monitoring transmission of medical images on a data communications network as the medical images are transported within the data communication network, the method comprising the steps of:

monitoring a medical image network transaction between a data source and a data target on the data communication network by a medical image transport service deployed on the electronic data communication network, ([0855]) , said data communication network including a plurality of network elements interconnected by communication links and configured to pass protocol data units between each other by utilizing the communication links, ([0098], internet)said medical image network transaction relating to the delivery of the medical image ([0023]; effective delivery of medical service information, [0215]; radiologist's reading ) over a dynamically

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determined route on the data communication network as the medical images are transported by exchanging protocol data units between the network elements over the communication links as the medical images are transferred between the data source and data target within the data communication network; and ([0098],[0238]; internet)

Rapaport fails to disclose notifying an entity associated with a transaction request which caused the medical image network transaction to be initiated as to the status of the medical image network transaction within the communication network within the communication network, or of an estimated time of delivery of the medical image to the data target, if the medical image network transaction is delayed by one or more network elements of the communication network. Moore disclose notifying an entity associated with a transaction request which caused the medical image network transaction to be initiated as to the status of the medical image network transaction within the communication network within the communication network, or of an estimated time of delivery of the medical image to the data target, if the medical image network transaction is delayed by one or more network elements of the communication network. Moore disclose notifying an entity associated with a transaction request which caused the medical image network transaction to be initiated as to the status of the medical image network transaction within the communication network within the communication network, or of an estimated time of delivery of the medical image to the data target, if the medical image network transaction is delayed by one or more network elements of the communication network. (2.3.3 action-value = "failed" / "delayed" / "delivered" / "relayed" / "expanded") At the time of invention, it would have obvious to modify

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Rapaport to disclose notifying an entity associated with a transaction request which caused the medical image network transaction to be initiated as to the status of the medical image network transaction within the communication network within the communication network, or of an estimated time of delivery of the medical image to the data target, if the medical image network transaction is delayed by one or more network elements of the communication network. The motivation would have been to inform human beings of the status of message delivery processing, as well as the reasons for any delivery problems or outright failures, in a manner that is largely independent of human language and media; (b) Allow mail user agents to keep track of the delivery status of messages sent, by associating returned DSNs with earlier message transmissions. (1.1 Purposes)

As per claim 2, Rapaport / Moore disclose the method of claim 1, and Rapaport discloses wherein the entity associated with the transaction request is a client application. ([0211])

As per claim 5, Rapaport / Moore disclose the method of claim 1, and Rapaport discloses wherein the step of notifying comprises notifying the entity of a change in scheduled time for delivery of the medical image ([0098], [0545];Update the Delivery Schedule)

As per claim 6, Rapaport / Moore disclose the method of claim 1, and Rapaport discloses wherein the step of notifying comprises notifying the entity of a delay in scheduled delivery of the medical image. ([0098])

As per claim 7, Rapaport / Moore disclose the method of claim 6, and Rapaport discloses wherein the step of notifying comprises notifying the entity of the reason for the delay, the source of the delay, the location of the delay, ([0842]; Figure 10: item 1055)and if other images can still be retrieved. ([0845]; Figure 10: item 1064)

As per claim 8, Rapaport / Moore disclose the method of claim 6, and Rapaport discloses wherein the step of notifying comprises notifying the entity of a likely resolutions to the delay. ([0846]; Figure 10: item 1088)

As per claim 9, Rapaport / Moore disclose the method of claim 1, and Rapaport discloses wherein the network is a first network , ([0091]; internet) and wherein the step of notifying comprises sending a notification ([0098]) on a second network. ([0091]; internet)

As per claim 10, Rapaport / Moore disclose the method of claim 9, and Rapaport discloses wherein the second network is separate from the first network, ([0091]; internet) and wherein the notification ([0098]) is a data message generated on the second network. ([0091])

As per claim 11, Rapaport / Moore disclose the method of claim 10, and Rapaport discloses wherein the data message is at least one of an e-mail, a pager message, and a voice message. ([0213])

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rapaport (US 2006/0161457) in view of Walker et al. – hereinafter Walker (US 2001/0039580).

As per claim 12, Rapaport discloses a computer readable medium incorporated in a network element and containing data and instructions which, when loaded into a



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processor the network element, cause the network element to implement a medical image transport service deployed on a communication network to monitor the transmission of medical images on the data communication network as the medical images are transported within the data communication network, the medical image transport service comprising:

a data management service to monitor the transmission of medical images over a dynamically determined route on the data communication network as the medical images are transported within the data communication network ([0855])

a client interface configured to provide notifications to a client related to the status of the transmissions of medical images on the network if the medical images are delayed on the network or of an estimated time of delivery of the medical images.

(([0098]; Alerts may be used to selectively notify various Medical Providers or Testing Facility Personnel of problems encountered in making urgent delivery attempts and/or of recently-gathered and important Patient information, [0545]; delivery status data: delivery time)

wherein the data communication network includes a plurality of network elements interconnected by communication links and configured to pass protocol data units between each other by utilizing the communication links, ([0098])and wherein the transmissions of medical images on the communication network that are monitored by the data management service are implemented using the protocol data units. ([0230])

Rapaport fails to disclose determine how the medical images are being handled by network elements forming the data communication network to estimate when the medical images will be delivered by the data communication network and to detect sources of delay in transmission of the medical images within the data communication network that may affect delivery of the medical images by the data communication network.

Walker discloses determining how the medical images are being handled by network elements forming the data communication network to estimate when the medical images will be delivered by the data communication network and to detect sources of delay in transmission of the medical images within the data communication network that may affect delivery of the medical images by the data communication network. ([0078], [0149]-[0153]; Figure 8C and Figure 8D)

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify Rapaport to disclose how the medical images are being handled by network elements forming the data communication network to estimate when the medical images will be delivered by the data communication network and to detect sources of delay in transmission of the medical images within the data communication network that may affect delivery of the medical images by the data communication network. The motivation for doing so would have been to provide a capability would enable a user connected to the router to be billed for the quantity of data transmitted or received from the network and could optionally additionally provide the customer with data indicating the quality of service provided. ([0012])

As per claim 13, Rapaport / Walker disclose the method of claim 12. Rapaport discloses further comprising a network resource manager configured to interface network devices in the network to resolve delays in the network attendant to transmission of medical images on the network. ([0846]; Figure 10: item 1088)

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHIRAG PATEL whose telephone number is (571)272-

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7966. The examiner can normally be reached on Monday to Friday from 8AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Flynn, can be reached on 571-272-1915

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/C. P./

Examiner, Art Unit 2454

/NATHAN FLYNN/

Supervisory Patent Examiner, Art Unit 2454